

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Ukiah Post Office
Ukiah, California

Docket No. A2011-21

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

August 11, 2011

I. INTRODUCTION AND BACKGROUND

On July 15, 2011, the Commission docketed the Petition For Review of Closure and Consolidation of Ukiah Main Post Office and Application for Suspension of Determination (Petition) of the closing of the Ukiah Main Post Office (Ukiah Post Office) in Ukiah, California.¹ On July 18, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.² Thereafter, on July 29, 2011, the Postal Service filed a Motion to Dismiss Proceedings (Motion to Dismiss) on the basis that the process involving the Ukiah Post Office is a relocation, not a consolidation or discontinuance as defined by 39

¹ Petition For Review of Closure and Consolidation of Ukiah Main Post Office and Application for Suspension of Determination, filed by Barry Vogel and Michael E. Sweeney.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, July 18, 2011 (Order No. 761).

U.S.C. §404(d) and not a matter over which the Postal Regulatory Commission (Commission) has jurisdiction.³

II. STATEMENT OF FACTS

On June 20, 2011, the Postal Service provided a letter to The Honorable Mayor Mari Rodin of the City of Ukiah, California, and posted notice to the patrons of the Ukiah Post Office, informing them that the Postal Service obtained the approval to “relocate retail services of the Ukiah Post Office, currently located at 224 N. Oak Street, to the Ukiah Carrier Annex, located at 671 South Orchard Street.”⁴ In both its mayoral letter and public notice, the Postal Service provided 39 CFR 241.4, as the governing regulation for the action, relayed appeal information and requirements, and provided the name and address of a Postal Service employee to whom any appeals of should be directed.⁵

On July 15, 2011, the Commission docketed the Petition. In it, petitioners Barry Vogel and Michael Sweeney (Petitioners) assert that the Postal Service’s removal of retail services from the Ukiah Post Office and into the South Orchard retail facility amount to a *de facto* consolidation or discontinuance and is subject to the procedures and guidelines of 39 CFR 241.3.⁶ Petitioners claim the Postal Service incorrectly categorized its action as a relocation, failed to comply with the regulated procedures

³ See, Motion of United States Postal Service To Dismiss, July 29, 2011.

⁴ Petition at 5 (Exhibit A), and 6 (Exhibit B).

⁵ *Id.*

⁶ *Petition*, at 3. The Petitioners do not directly mention or refer to 39 U.S.C. §404(d), the statute governing discontinuances procedures. However, it may be implied by the language of Petitioners’ argument and reliance on regulation 39 CFR 241.3, that they believe the Postal Service’s actions fall within the statutory scope of 39 U.S.C. §404(d).

stipulated in 39 CFR 241.3, and request that the Commission suspend the Ukiah Post Office closure pending the outcome of this appeal.⁷

On July 29, 2011, the Postal Service responded to the Petition with its Motion to Dismiss, claiming the decision to remove retail service from the Ukiah Post Office into the South Orchard retail facility constitutes a relocation of services and is governed by 39 CFR 241.4, not 39 U.S.C. § 404(d).⁸ The Postal Service justifies its characterization on the basis that: the Ukiah Carrier Annex on South Orchard Street (South Orchard) and Ukiah Post Office are within the same county; the Ukiah Carrier Annex on South Orchard Street locations are less than one mile apart; and the Ukiah community will not lose retail services.⁹

III. POSITIONS OF THE PARTIES

A. The Petitioners

The Petitioners contend the Postal Service is required to follow the statutory requirements of 39 U.S.C. § 404(d) prior to closing the Ukiah Post Office. Petitioners argue the Postal Service: (1) erroneously classified its decision to move retail services from the Ukiah Post Office to the Peach Orchard retail facility as a relocation; and (2) failed to follow the disclosure procedures of § 404(d) and 39 CFR 241.3.¹⁰ As relief, Petitioners request the Commission ultimately find that the Postal Service has violated its statutory obligations, deny the current closure of the Ukiah Post Office, and in the

⁷ *Id.*

⁸ Motion to Dismiss, at 3.

⁹ *Id.*, at 3-5.

¹⁰ Petition, at 2-3. Specifically, Petitioners argue that the Postal Service failed to provide Ukiah Post Office patrons with written findings supporting its decision to discontinue retail service at Ukiah Post Office.

interim, suspend the Postal Service from taking any actions in furtherance of the discontinuance, pending the outcome of this appeal.¹¹

B. The Postal Service

On July 29, 2011, the Postal Service filed a Motion to Dismiss Proceedings. In its Motion to Dismiss, the Postal Service argues: (1) the closure of Ukiah Post Office constitutes a relocation; (2) discontinuances that are the result of relocations are not governed by 39 U.S.C. §404(d), but rather 39 CFR 241.4; and (3) relocations are outside the subject matter jurisdiction of the Commission.¹²

The Postal Service's argument draws heavily from the Commission's opinion in Docket No. A2007-1, arguing that the situation in Ukiah, California is similar to that in the *Encorse Classified Branch* case and supported by controlling precedent from *Oceana Station, Virginia Beach, VA*, in which the Commission dismissed a similar appeal on the basis that "the Postal Service is merely rearranging the retail facilities in the community."¹³ In support of its argument, the Postal Service points out that the South Orchard facility is less than one mile from the Ukiah Post Office, retail services are being moved not eliminated, and proper notification has been provided to the Ukiah Mayor and patrons of the Ukiah Post office.¹⁴ According to the Postal Service, pursuant to the precedent set in *Oceana*, the factors evidence that the moving of retail services

¹¹ *Id.*, at 3.

¹² See, Motion to Dismiss.

¹³ Docket No. A2007-1, *Encorse Classified Branch, Ecorse, Michigan*, Order No. 37, October 9, 2007,(citing Docket No. A82-10, *In re Oceana Station, Virginia Beach, VA*, Order No. 436, June 25, 1982).

¹⁴ Motion to Dismiss, at 3-5. Although the Postal Service states that relocation procedures are governed by 39 CFR 241.4, it does not state whether it has or has not complied with the requirements of 39 CFR 241.4.

from the Ukiah Post Office to the South Orchard facility is a rearrangement of retail facilities that is not subject to the requirements of § 404(d).¹⁵

III. ANALYSIS OF JURISDICTIONAL AUTHORITY

The dispositive issue in this case is whether the Postal Service's action regarding the Ukiah Post Office constitutes a consolidation or discontinuance governed by 39 U.S.C. § 404; or qualifies as a postal retail facility relocation. After careful review of the facts presented, the Public Representative concludes that the Postal Service's action concerning the Ukiah Post Office is a relocation or realignment of services within the same community. As a result, the current appeal is improperly before the Commission.

The Commission has jurisdiction to hear appeals of post office closings that are required to follow the statutory requirements of § 404(d). The Commission is clear that "the Postal Service is not required to follow the formal section 404[(d)] procedure when it is merely rearranging its retail facilities in a community"¹⁶ because "[t]he requirements of section 404[(d)] do not pertain to the specific building housing the post office; but rather are concerned with the provision of a facility within the community."¹⁷

The Postal Service claims, without contradiction from Petitioners, that its rearrangement of facilities consists of moving retail facilities from Ukiah Post Office to the South Orchard facility, less than a mile away.¹⁸ Consequently, the community does not experience a decrease or extinguishment of retail services. The ability to be more efficient and provide the same and possibly more services in one location, in and to the same geographic area, constitutes a relocation of retail service.

¹⁵ *Id.*

¹⁶ Docket No. A2007-1, Order No. 37 at 6, (citing Docket A82-10, Order 436, *In re Oceana*, at 6).

¹⁷ *Id.*, (citing, *In re Oceana* at 7,); see, also Docket No. A83-30, *In re Knob Fork, WV*, Comm'n Op. Remanding Determination for Further Consideration – 39 U.S.C. § 404(b)(5), January 18, 1984.

¹⁸ Motion to Dismiss, at 2 and 5.

For these reasons, the Public Representative concludes that the procedural requirements of § 404(d) do not apply in the above-captioned matter, and the appeal of the Postal Service's actions regarding the Ukiah Post Office does not fall within the Commission's jurisdiction under that section.¹⁹

VI. CONCLUSION

For the reasons set forth above, the Commission should dismiss the Petitioners' appeal for lack of jurisdiction.

Respectfully Submitted,

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¹⁹ The Petitioner also expresses concern that the Postal Service has failed to conform its actions concerning the Ukiah Post Office's retail services to Section 106 of the National Historic Preservation Act (NHPA). Petition, at 3. Regulation 39 CFR 241 clearly states that whether the discontinuance of a postal facility is undertaken in accordance with the policy of Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, is a matter of internal Postal Service policy and subject to scrutiny by the Postal Service Board of Governors. It is therefore, a matter outside the scope of the Commission's subject jurisdiction.